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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

LEON JOHN MORENO,

Defendant and Appellant.

C086722

(Super. Ct. No. CH034440)

Appointed counsel for defendant Leon John Moreno filed an opening brief setting forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) There are sentencing errors that require correction so we vacate the sentence and remand the matter.

FACTS AND PROCEEDINGS

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.)

Registered nurse Lauren Rojas was working at the medical and dental clinic at High Desert State Prison when defendant was brought in for treatment. When she asked him to open his mouth so she could take his temperature she saw he had bindles in his mouth under his tongue. She asked him to spit them out and he did not, so she notified the clinical escort officer, Officer Anderson. Anderson ordered defendant to spit the items out. Defendant did not, and he appeared to be chewing and swallowing. Other correctional officers arrived and placed defendant in cuffs. After the officers lifted defendant and ordered him to spit the items out, defendant spit out four objects, each a bindle about a quarter to one inch long.

The officers put defendant on contraband surveillance. On contraband surveillance, the inmate is restrained in a cell by himself, must notify an officer if he has to use the restroom, and his feces is collected and searched. An inmate can be kept in contraband surveillance until he defecates three times. Two more bindles were recovered from defendant's feces.

Five of the bindles contained a black tarry substance, four of which were tested and found to be heroin. Three bindles contained handwritten notes that constituted a pay-owe sheet, which included the cost and directions on how to pay for the drugs. One of the bindles also contained a weapon, a plastic object with a sharpened metal tip.

The People filed a complaint that charged defendant with possession of a controlled substance in state prison (Pen. Code, § 4573.6--count I)¹ and possession of a weapon while in custody (§ 4502, subd. (a)--count II). The complaint also alleged defendant had a prior serious or violent felony conviction. (§ 667, subds. (b)-(i).) Defendant filed a motion to suppress (§ 1538.5) contending the contraband surveillance was unduly long and therefore an unreasonable detention. The trial court denied the

¹ Undesignated statutory references are to the Penal Code.

motion. The People then filed an information with the same charges and allegations as the complaint.

Defendant filed a motion to traverse the search warrant that allowed his body to be searched, challenging the timing of seeking the warrant and the conditions of the surveillance watch. The trial court denied the motion.

A jury found defendant guilty on both counts. In separate proceedings, defendant admitted the prior conviction allegation. The trial court sentenced defendant to the upper term of four years on count I, doubled due to the prior felony conviction. The trial court did not impose a sentence on count II, and stayed it under section 654. The trial court also imposed a \$300 restitution fine and imposed and stayed a \$300 parole fine. The trial court did not impose the court operations fee (§ 1465.8) and court facilities assessment (Gov. Code, § 70373) in the interest of justice and awarded zero presentence custody credits.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende*, *supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no such communication from defendant.

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant. We have, however, found errors that require correction. First, as to count II, the trial court erred in not imposing a sentence. The trial court must impose sentence on every count but stay execution as necessary to implement section 654. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1472.) Second, as to the court operations fee (§ 1465.8) and court facilities assessment (Gov. Code, § 70373), these are mandatory fines. A sentencing court has no discretion to decline to impose them under the circumstances present in this case. (*People v. Woods*

(2010) 191 Cal.App.4th 269, 273.) Accordingly, we must remand the matter to the trial court to correct these errors.

DISPOSITION

The sentence is vacated. The matter is remanded to the trial court with instructions to impose sentence on count II, and stay it under section 654, and to impose the mandatory fees and fines.

/s/
BLEASE, Acting P. J.

We concur:

/s/
HULL, J.

/s/
DUARTE, J.